

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6896 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 & 3 to 5 No. No.2 Yes.

AMANULLAKHAN KUDRATALLAKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

MR LR POOJARI, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 5 /04/99

CAV JUDGEMENT

The petitioner who has been adjudged and declared as dangerous person by the Detaining Authority, Commissioner of Police, Ahmedabad City under section 3(2) of the Gujarat Prevention of Anti-social Activities Act,1985 (for short 'PASA') has challenged the detention order dated 13.8.1998 and has prayed for quashing of the said order and also for his immediate release from illegal detention.

The facts giving rise to this petition briefly stated are as under.

From the grounds of detention it seems that the petitioner is belonging to the notorious Latif gang of Ahmedabad and the members of this gang hatch conspiracy with intention to extort money and to fulfill that conspiracy with a view to extorting Rs.10 lakh from innocent persons engaged in building construction business in the City, in complicity with each other made innocent citizens to talk with Latif on cellular phone. The petitioner decided to extort Rs.5 lakh and threatened the victim with life, kept him under constant fear of death. On this activity of the petitioner CR No.36/97 under sections 120-B, 387 and 506(2) IPC was registered against him in Ahmedabad. In addition to this, two confidential witnesses also gave statements against the petitioner highlighting his antisocial activities in the nature disclosed in above crime register number and also that his activities were prejudicial for maintenance of public order. Being satisfied from the aforesaid material, the Detaining Authority declared the petitioner as dangerous person and finding his activities to be prejudicial for maintenance of public order passed the impugned order of detention.

The impugned order has been challenged only on one ground that the petitioner is not a dangerous person and could not be declared as dangerous person because only one registered offence was available against him and on the basis of isolated registered offence the petitioner could not be adjudged as dangerous person.

A dangerous person has been defined under section 2(c) of the PASA as under :

"2(c) "dangerous person" means a person, who either by himself or as a member or leader of a gang habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act,1959."

From the above definition, it is clear that a person can be said to be dangerous person when he himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapters XVI and XVII of the Indian Penal Code and any of the offences punishable under Chapter V of the Arms Act.

Learned Counsel for the petitioner placing reliance upon two decisions of the Apex Court in Ayub

Pappukhan Nawabkhan Pathan Vs. S.N.Sinha and another, AIR 1990 SC 2069 and Rashidmiya @ Chhava Ahmedmiya Shaikh Vs. Police Commissioner, Ahmedabad, AIR 1989 SC 1703 contended that the Apex Court has held that solitary incident would hardly be sufficient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of offences hence, detention of the petitioner on the basis of one registered offence only is illegal.

The expression "habitually commits" under section 2(c) of PASA was explained by the Apex Court in Vijay Narain Singh Vs. State of Bihar, AIR 1984 SC 1334. The expression habitually means repeatedly or persistently. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar but not isolated individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions.

In Rashidmiya @ Chhava Ahmedmiya Shaikh Vs. Police Commissioner (Supra), the Apex Court held that a solitary incident would hardly be sufficient to conclude that the detenu was habitually committing or attempting or abetting commission of offence.

Thus, in view of Section 2(c) of PASA and aforesaid decisions, it is necessary that before a person can be declared as dangerous person he either himself or as a member or leader of a gang commits offences punishable under Chapter XVI or Chapter XVII of the IPC or under Chapter V of the Arms Act, habitually. Attempt to commit such offence by such person will also render such person as dangerous person. Likewise abetment by such person in commission of such offence will also render him dangerous person. Further, a single isolated incident or case cannot be equated with word habitual or expression habitually commits 'such offence' within the meaning of Section 2(c) of the Act.

The cases of Ayub Pappukhan Nawabkhan Pathan V/s. S.N.Sinha (Supra) and Rashidmiya @ Chhava Ahmedmiya Shaikh Vs. Police Commissioner, Ahmedabad (Supra) are distinguishable on facts. So far as the law is concerned, in both the cases the Apex Court has laid down that single offence registered against the detenu is not enough to declare him as dangerous person. However, if we look to the facts of the two cases it can be said that the two cases are distinguishable on facts with reference

to the facts of the case under consideration before me.

In Ayub's case (Supra) the facts were that only one CR No.96/90 was pending investigation against the detenu. No other case was registered against the detenu nor any witness had stated about commission of any offence by the petitioner. In these circumstances the solitary case registered against the petitioner was found insufficient to declare him as dangerous person within meaning of section 2(c) of the PASA. Likewise in Rashimmiya's case (Supra) also, only one CR No.2/88 was registered against the detenu in Kalupur Police Station. The other four cases against the detenu were under Bombay Prohibition Act, which were for the purpose of section 2(b) of the PASA. The only registered offence against the petitioner was CR No.2/88 under sections 307, 120(B) and 212 IPC, Section 3(1)(3) of Terrorist Act and Sections 4 and 5 of Explosive Act and Section 25(1)(A)(C) of the Arms Act. Here also no witness stated about the commission of any other offence by the detenu which could be punishable under Chapters XVI and XVII of the IPC or under Chapter V of the Arms Act.

In the case before me it is true that only one offence CR No.36/97 under sections 120(B), 387 and 406(2) of the IPC was registered against the petitioner. But that is not the end of the matter. Two confidential witnesses also stated about the incidents dated 26.7.1998 and 2.8.1998.

The first witness stated about the incident dated 26.7.1998 at 7.00 P.M. He was present at the place of his business. The petitioner along with his companions went to the witness and demanded Rs.1 lakh for fighting case against the petitioner and his companions. The witness refused whereupon the petitioner got excited and threatened the witness along with his companions and dragged him near Nehru Bridge in public. The witness raised alarm for his rescue. People from the nearby locality collected. The petitioner became more excited and he in the company of his companions rushed towards those persons hence there was helter-skelter amongst people and an atmosphere of fear was created and traffic was disturbed.

The other witness narrated the incident dated 2.8.1998 which occurred at 5.00 P.M. He too was present at his business place. The petitioner in the company of his companions went there and told him that for getting bail of Latif gang members lot of money was spent hence Rs.50,000/- were demanded from the witness. The witness

refused whereupon the petitioner got excited and with the help of his companions dragged the witness near Khanpur Gun House on the road and took out Rs.900/- from his pocket and beat him. The witness raised alarm. Therefore, people gathered from nearby locality. The petitioner and his companions rushed towards those people with arms and thereafter helter-skelter was created. Traffic was disrupted and atmosphere of fear gripped the area.

Thus, the second witness has stated about extortion of Rs.900/- from him. Further, from these two witnesses commission of offence of beating to these two witnesses is also prima facie disclosed. Demand of Rs. 1 lakh from the first witness was also disclosed.

Similar was the activity in the registered offence when Rs. 10 lakh were to be collected and out of this amount Rs. 5 lakh were demanded from the complainant and on refusal he was threatened with life. He was placed under constant fear of death. Thus, modus operandi in all the three cases seems to be the same and in this view of the matter repeated commission of offences punishable under Chapters XVI and XVII of the IPC are prima facie disclosed.

It is difficult to accept the contention that since only one case was registered against the petitioner he could not be declared as dangerous person. The requirement of section 2(c) of the PASA is that such person who habitually commits, or attempts to commit or abets the commission of any of the offences mentioned under this section can be said to be the dangerous person. Thus, commission of any of the offences permissible under Chapter XVI or XVII of the I.P.C. or under Chapter V of the Arms Act or attempt to commit or abetment in commission of any of these offences has been the intention of the legislature in enacting section 2(c) and not that registration of these offences is a condition precedent to attract section 2(c) of PASA.

There may be several reasons for not registering the said offences with the police. The extreme fear in the mind of the witness may be one factor as has been disclosed by the two confidential witnesses in the instant case. Likewise out of several other considerations, for example, fear to the life and property of the witnesses or the victims and fear of damage likely to be caused to the reputation of such victims to approach the police for registering the case may be the reasons why commission of such offences is not

reported to the police. Thus, registration of cases was no intention of the legislature while enacting section 2(c) to treat it as condition precedent. On the other hand, the provision under this section is habitually commission of offences and if repetition of such activity was noticed by the Detaining Authority (i) in the registered offence and (ii) in the incidents narrated by two confidential witnesses, it can be said that there was sufficient material before the Detaining Authority to reach subjective satisfaction that the petitioner was habitually committing offences punishable under Chapters XVI and XVII IPC. It has also been made out from the grounds of detention that the petitioner is a member of Latif gang and he was committing such offences not alone but as member of Latif gang in the company of his companions. In this view of the matter requisite ingredients of section 2(c) of PASA are made out in the instant case, hence, the subjective satisfaction of the Detaining Authority in declaring the petitioner as dangerous person requires no interference nor such subjective satisfaction is vitiated in the eyes of law.

No other point was pressed by the learned Counsel for the petitioner. The Detaining Authority was therefore justified in declaring the petitioner as dangerous person.

However, a point which should have been argued was not argued by the learned Counsel for the petitioner viz. even dangerous person cannot be detained preventively unless his activities are found prejudicial for maintenance of public order within the ambit of section 3(4) and explanation appended to that section. The concept of public order and the definition of public order in section 3(4) and explanation appended thereto under PASA makes it clear that even deeming provision has been made in this behalf by the legislature and extended meaning of disturbance of public order is that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity amongst general public or any section thereof or grave or widespread danger to life, property or public health. The person indulging in such activities can be said to have involved in the activities prejudicial for maintenance of public order.

Narration of incidents by the two confidential witnesses is enough to cover the activities of the

petitioner within the extended meaning of disturbance of public order as contained in section 3(4) and explanation appended thereto. In one case, the witness was threatened of dire consequences in case he was not willing to give Rs.1 lakh to the petitioner to fight out the cases. He was beaten by the petitioner and his companions and he was dragged near Nehru Bridge a public place. The petitioner shouted for help. The persons who collected at the spot were also threatened and chased by the petitioner and his companions showing them arms. People ran helter skelter. Atmosphere of fear was created in the locality viz. on Nehru Bridge and in the nearby locality. From this incident a signal was given in the minds of the witness as well as people who collected to save the witness that the petitioner is so highhanded that he could demand Rs.1 lakh from the businessman and on refusal he was beaten and threatened with life and even persons who were willing to help him and save him were also to face similar consequences. The public order was therefore disturbed in the area near Nehru Bridge and businessmen in the locality were also feeling sense of insecurity in their minds at the hands of the petitioner and his companions.

In the second incident also similar situation arose. In addition, that the witness was beaten on refusal to pay Rs.50,000/- to the petitioner, Rs.900/- were forcibly taken from the pocket of the witness and he was beaten again. The persons who reached the spot to save the witness were also chased by the petitioner and his companions showing arms, on account of which people ran here and there helter skelter and traffice on the road was disturbed. Atmosphere of fear was created. These two incidents were not such which occurred inside the business place of the two witnesses, rather the two witnesses were dragged to public places like Nehru Bridge and on public road and they were beaten because they refused to pay Rs. 1 lakh and Rs.50,000/- respectively to satisfy the demand of the petitioner. Thus, feeling of insecurity was created in the minds of the witness and the public at large in the locality. In the second incident also harm was caused to the second witness. This harm was not only physical harm in the sense that the witness was beaten but also he was deprived of Rs.900/- from his pocket by the petitioner.

Thus considering the magnitude of the two activities disclosed by the two confidential witnesses it can be said that public order was certainly disturbed by the activities of the petitioner.

The petitioner under these circumstances was rightly detained under PASA. The impugned order is therefore perfectly valid and requires no interference in this writ petition. The writ petition is therefore devoid of force and is bound to fail.

The writ petition is hereby dismissed.

Sd/-

(D.C.Srivastava,J)

m.m.bhatt